

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Nawaz Ahmed,	:	
	:	
Petitioner	:	Civil Action 2:08-cv-00493
	:	
v.	:	Judge Marbley
	:	
David Bobby, Warden	:	Magistrate Judge Abel
	:	
Respondent	:	

ORDER

Petitioner Nawaz Ahmed, a State prisoner, brings this action under 28 U.S.C. §2254 alleging that he is in custody in violation of the Constitution of the United States. This matter is before the Court on Magistrate Judge Abel's June 20, 2009 Report and Recommendation that this case be transferred as a successive petition to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1631. Alternatively, the Report and Recommendation recommended that this case be consolidated with *Nawaz Ahmed v. Marc C. Houk*, 2:07-cv-658 and that the petition here then be stricken as filed in violation of the Court's April 16, 2008 Order. *Nawaz Ahmed v. Marc C. Houk*, 2:07-cv-658 (April 16, 2008 Order, doc. 32).

On August 13, 2008, petitioner Ahmed filed objections to the Report and Recommendation. Petitioner argues that the court should not make any further rulings in this case until it appoint counsel for him. Ahmed states that there has been a total break down in communication between him and his counsel in 2:07-cv-658. He

does not believe that they are providing him with the effective assistance of counsel. He further asserts that the petition he filed pro se is really the first habeas corpus petition, not that filed in 2:07-cv-658. Petitioner further argues that the terms "second" and "successive" are words of art that should not be read literally. Finally, he argues that the court should consider this second habeas corpus petition to be an amended petition.

These arguments are wholly without merit. Petitioner Ahmed is merely attempting to circumvent the Court's April 16, 2008 Order in *Nawaz Ahmed v. Marc C. Houk*, 2:07-cv-658 (April 16, 2008 Order, doc. 32).

Upon *de novo* review as required by 28 U.S.C. §636(b)(1)(B), the Court ADOPTS the Report and Recommendation. Since petitioner Ahmed argues that the petition in this case should be treated as an amended petition for writ of habeas corpus, the Court directs the Clerk of Court to CONSOLIDATE this action with *Nawaz Ahmed v. Marc C. Houk*, 2:07-cv-658.

s/ Algenon L. Marbley
Algenon L. Marbley, Judge
United States District Court